

7323

REGISTRATION NO. _____ FILED IN _____

JAN 28 1974 - 12 00 PM

EQUIPMENT LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT, dated as of September 15, 1973 between Mellon National Leasing Corporation, a Pennsylvania corporation (hereinafter called the "Lessor"), and The Pittsburgh & Shawmut Railroad Company, a Pennsylvania corporation (hereinafter called the "Lessee"):

WHEREAS, Lessor is acquiring from Greenville Steel Car Company (the "Manufacturer") the railroad equipment described in Schedule A hereto (hereinafter called the "Cars"); and

WHEREAS, Lessee desires to lease the Cars from Lessor, at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor and Lessee hereby agree as follows:

1. LEASE OF CARS. Upon delivery of each Car by the Manufacturer, the Lessor shall lease such Car to the Lessee and the Lessee shall hire such Car from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

Upon delivery of each Car by the Manufacturer the Lessee will inspect such Car and, if such Car tendered for delivery appears to meet the specifications, the Lessee will accept delivery thereof

and execute and deliver to the Manufacturer and Lessor duplicate Certificates of Acceptance, substantially in the form of Exhibit 1 attached hereto and made a part hereof.

The Lessee's execution and delivery to the Lessor of the Certificates of Acceptance with respect to each Car shall conclusively establish that (i) such Car is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and (ii) such Car is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation requirements and specifications, if any, and (iii) there is affixed to such Car the identification number and marks required by Section 5 hereof.

2. TERM. The Lease term shall commence on the date hereof and shall end September 15, 1985. If such term be extended, the word 'term' or 'period' as used in this Lease shall be deemed to refer to the extended term, and all provisions of this Lease shall apply during and until the expiration of such extended period, except as may be otherwise specifically provided in this Lease or in any subsequent written agreement of the parties.

3. RENT, NET LEASE. The total rent for the Cars shall be \$4,182,566.40 and shall be payable as follows: (i) \$43,568.40 on the date the Lessor pays the Manufacturer the purchase price of the first 100 Cars, (ii) \$43,568.40 on the date the Lessor pays the Manufacturer the purchase price of the second 100 Cars and

(iii) and thereafter in forty-seven (47) consecutive installments of \$87,136.80 each, commencing on December 15, 1973 and continuing thereafter on each March 15, June 15, September 15 and December 15 throughout the term of this Lease. Each such installment shall cover the quarterly period commencing on such date.

This Lease provides for a net lease and the rent and other amounts due hereunder shall not be subject to any defense, claim, reduction, set-off, or adjustment for any reason whatsoever except to the extent expressly provided in Section 7A or in Section 9; nor, except as provided in Section 7A or as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Cars from whatsoever cause, the taking or requisition of the Cars by condemnation or otherwise, the lawful prohibition of Lessee's use of the Cars, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at its office at 3714 Mellon Bank Building, Pittsburgh, Allegheny County, Pennsylvania 15219, or at such other place as the Lessor shall specify in writing.

4A. Lessee's Representations and Warranties. Lessee represents and warrants that:

- (a) Lessee is a corporation duly organized and existing in good standing under the laws of the Commonwealth of Pennsylvania and is duly qualified to do business wherever necessary to carry on its present business and operations;
- (b) This Lease has been duly authorized by all necessary corporate action on the part of Lessee, does not require any shareholder approval and does not contravene Lessee's Articles of Incorporation or By-Laws or any indenture, credit agreement or other contractual agreement to which Lessee is a party or by which it is bound;
- (c) Neither the execution and delivery by Lessee of this Lease nor any of the transactions by Lessee contemplated hereby require any notice, consent or approval;
- (d) This Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms;
- (e) There are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect Lessee's financial condition or operations; and
- (f) The balance sheet of Lessee as of December 31, 1972 and the related earnings statement of Lessee for the fiscal year then ended (copies of which have been furnished to Lessor) correctly set forth Lessee's financial condition as of such dates and the results of its operations for such periods, and since December 31, 1972 there has been no material adverse change in such condition or operations.

4B. Lessor's Representations and Warranties. Lessor represents and warrants that:

(a) Lessor is a corporation duly organized and existing in good standing under the laws of the Commonwealth of Pennsylvania and is duly qualified to do business wherever necessary to carry on its present business and operations;

(b) This Lease has been duly authorized by all necessary corporate action on the part of Lessor, does not require any shareholder approval and does not contravene Lessor's Articles of Incorporation or By-Laws or any indenture, credit agreement or other contractual agreement to which it is bound;

(c) Neither the execution and delivery by Lessor of this Lease nor any of the transactions by Lessor contemplated hereby require any notice, consent or approval; and

(d) This Lease constitutes a legal, valid and binding obligation of Lessor enforceable in accordance with its terms.

5. IDENTIFICATION MARKS. The Lessee will cause each Car to be kept numbered with its identifying number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Car, in letters not less than one inch in height, the name of the Lessor followed by the words "Owner and Lessor" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Car and its rights under this Lease. The Lessee will not place any Car in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof

and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Car except with the consent of the Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited; provided, however, that, in addition to such identifying number, the Lessee may cause to be placed on each Car in such position as not to be confused with the identifying number thereon a reporting number identifying such Car for reporting and operating purposes, which reporting number may be changed by the Lessee from time to time without the consent of the Lessor or the filing, recording, registering and depositing of any instrument.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Cars as a designation that might be interpreted as a claim of ownership. Subject to the foregoing, the Lessee may cause the Cars to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or similar type for convenience of identification of the right of the Lessee to use the Cars under this Lease.

6. TAXES. The Lessee agrees that, during the continuance of this Lease, in addition to the rentals herein provided, it will promptly pay all taxes, assessments and other governmental charges (together with any penalties, fines, or interest thereon), including but not limited to sales or use taxes, levied or assessed upon the Cars or the interest of the Lessee in the Cars subject to this Lease or any thereof or upon the use, operation or leasing thereof or the rentals or earnings arising therefrom and will promptly pay or reimburse the Lessor for all taxes, assessments and other governmental charges levied or assessed against the Lessor on account of its acquisition or ownership of such Cars or any thereof or on account of the use, operation or leasing thereof or on account of the rentals or earnings arising therefrom (excluding, however, federal taxes on, or measured by, the net income of the Lessor and state taxes on, or measured by, the net income of the Lessor to the extent imposed by the Commonwealth of Pennsylvania, but including any and all other federal, state or other taxes imposed on the Lessor), including but not limited to any sales or use taxes payable on account of the acquisition or ownership of the Cars or any thereof by the Lessor or on account of the leasing of the Cars hereunder; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of the Lessor, the rights or interests of the Lessor will be materially endangered. In the event any tax reports are required to be made on the basis of individual Cars, the Lessee will either make such reports in such manner as to show the ownership of such Cars by the Lessor or will notify the Lessor of

such requirement and will make such report in such manner as shall be satisfactory to the Lessor.

All of the agreements contained in this Section 6 shall survive and continue in full force and effect notwithstanding termination of this Lease or of the lease of any or all Cars hereunder.

7A. PAYMENT FOR CASUALTY OCCURRENCE OR CARS UNSERVICEABLE FOR USE. In the event that any Car shall be or become worn-out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, obsolete or economically unserviceable for use from any cause whatsoever (such occurrences being hereinafter called ("Casualty Occurrences")) during the term of this Lease, the Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Lessor in regard thereto. On the next succeeding rental payment date, the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as defined in Schedule B hereto) of such Cars as of the date of such payment, in accordance with Schedule B. Upon making such payment, in respect of any such Car, (i) rent on such Car (ie, \$435.68 per installment) shall cease to accrue, (ii) title to such Car shall automatically pass to the Lessee AS-IS WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, and (iii) the term of lease of such Car shall end.

The Lessee shall bear the risk of any Casualty Occurrence and, except as hereinabove in this Section 7A provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Car.

7B. INSURANCE. Lessee shall at all times during the term of this Lease carry and maintain on the Cars such insurance in the kind, amounts and form satisfactory to Lessor with such companies satisfactory

to Lessor, provided that Lessee shall not be required to maintain insurance against physical damage to the Cars except to the extent that such insurance is maintained by the Lessee on similar equipment which it owns. Evidence of such coverage shall be delivered to Lessor prior to acceptance by Lessee of the first Car under this Lease. Thereafter, Lessee will deliver to Lessor all renewal policies of insurance issued in accordance with the terms and conditions as set forth above. Lessee will cause its insurers to advise Lessor in writing promptly in the event such insurance is invalidated or rendered unenforceable in whole or part as a result of any default in payment of premium or any other act or omission. All insurance policies and coverage required under the terms of this Lease shall provide for not less than thirty days' notice to Lessor at the address stated herein, in the event of reduction, termination or cancellation of insurance by Lessee or its insurers. In the event that Lessor shall fail to maintain insurance as herein provided, Lessor may, at its option, provide such insurance and, in such event, Lessee shall upon demand, reimburse Lessor for the cost thereof. All such insurance shall name Lessor and Lessee as insureds.

8. ANNUAL REPORTS. Lessee shall furnish to Lessor:

- (i) as soon as available but in any event within 120 days after each fiscal year of Lessee, a copy of the annual financial statement of Lessee, including a balance sheet and income statement, prepared in accordance with the Uniform System of Accounts prescribed by the Interstate Commerce Commission; (ii) on or before March 1, in each year commencing with the year 1974, an accurate statement, as

of the preceding December 31 (a) showing the amount, description and numbers of the Cars then leased hereunder, the amount, description and numbers of all Cars that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement); and such other information regarding the condition and state of repair of the Cars as the Lessor may reasonably request, and (b) stating that, in the case of all Cars repainted during the period covered by such statement, the markings required by Section 5 hereof have been preserved or replaced.

The Lessor shall have the right (but shall not be obligated), at its sole cost and expense, by its authorized representatives, to inspect the Cars and the Lessee's records with respect thereto, at such reasonable times as it shall deem necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

9. MAINTENANCE: COMPLIANCE WITH LAWS AND RULES: AND INDEMNIFICATION. THE LESSOR LEASES EACH OF THE CARS AS-IS WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE CARS DELIVERED TO THE LESSEE HEREUNDER, but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to

time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as Owner, under any express or implied warranties of any manufacturer or vendor.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Car which is subject to this Lease in good order and repair, ordinary wear and tear excepted. The Lessee agrees to comply with all Governmental laws, regulations, requirements and rules (including the rules of the Interstate Commerce Commission and the current Interchange Rules, or supplements thereto, of the Association of American Railroads) with respect to the use, maintenance and operation of each Car subject to this Lease. In case any equipment or appliance on any such Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Car in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense; and the Lessee agrees to maintain such Car in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease.

If at any time during the lease term of any Cars under this Lease, it shall be determined by the Interstate Commerce Commission or by the Association of American Railroads that any of such Cars do not conform to the respective standards, specifications and requirements of either of the two entities named in this paragraph, Lessor may, at its option, upon 30 days' notice to Lessee, declare terminated the lease of such nonconforming

Cars if Lessee does not agree in writing within said 30 day period to correct such non-conformity at its sole cost and expense. If the Lessee so agrees, it shall effect such correction within 120 days from the date of such notice. Upon a declaration of termination under this Section, Lessee shall pay to Lessor on the next succeeding rental payment date the Casualty Value (as defined in Schedule B hereto) of such Cars as of the date of such payment, in accordance with Schedule B. Upon payment of such Casualty Value and payment of all rent accrued and unpaid on each such Car to the date of payment, (i) rent on each such (ie, \$435.68 per installment) shall cease to accrue, (ii) title to each such Car shall automatically pass to the Lessee AS-IS WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, and (iii) the term of lease of each such Car shall end.

Any freight car parts installed or replacements made by the Lessee upon any Car shall be considered accessions to such Car and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense or liability (including but not limited to counsel fees and expenses and patent liabilities) which the Lessor may incur in any manner by reason of its ownership of, or which may arise in any manner out of or as a result of the use or operation of, any Car while it is subject to this Lease, and to indemnify and save harmless the Lessor against any claim or suit arising out of the operation of such Car resulting in damage to property or injury to any person.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing

(or, to the extent permissible, file on behalf of the Lessor) any and all reports required to be filed by Lessor, with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Cars or the leasing of the Cars to Lessee.

10. RETURN OF CARS UPON EXPIRATION OF TERM. As soon as practicable on or after the expiration of the term of this Lease with respect to any Car, (except any Car title to which has passed to the Lessee pursuant to Sections 7A or 9 hereof), the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Car to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Car on such tracks for a period not exceeding three months and the Lessee shall transport the same, at any time within such three-months' period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Car to be at the expense and risk of the Lessee. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives or any prospective purchaser of any such Car, to inspect the same. The assembling, delivery, storage and transporting of the Cars as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against

the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Cars.

11. DEFAULT AND REMEDIES. If during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur:

A. default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Cars, or any thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Cars within 30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee, and all the obligations of the Lessee under this Lease shall not have been duly assumed

in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option may

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or

to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee to the use of the Cars shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Cars for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Car, which represents the excess, if any, of the then present value (discounted at 5% per annum) at the time of such termination, of all rentals for such Car which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as

to such Car over the then present value (discounted at 5% per annum) of the then fair rental value of such Car for such period as determined by appraisal in accordance with the procedures set forth in Section 18(b) hereof; and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any and all existing or future claims to any offset against the rental payment due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf in connection with the Lease of the Cars.

The failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

12. RETURN OF CARS UPON DEFAULT. If the Lessor shall terminate this Lease pursuant to Section 11 hereof, the Lessee shall forthwith deliver possession of the Cars to the Lessor. For the purpose of delivering possession of any Car or Cars to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated)

- A. forthwith place such Cars upon such storage tracks of the Lessee as the Lessor may designate or, in the absence of such designation, as the Lessee may select,
- B. permit the Lessor to store such Cars on such tracks for a period not exceeding three months at the risk of the Lessee, and
- C. transport the same, at any time within such three months' period, to any place on the lines of railroad operated by it or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of Cars as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Cars.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 12, the Lessee

hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Car to the Lessor, to demand and take possession of such Car in the name and on behalf of the Lessee, from whosoever shall be at the time in possession of such Car.

13. ASSIGNMENT; POSSESSION AND USE. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Cars or any of them. Notwithstanding any assignment, transfer or encumbrance by Lessee of its leasehold interest in the Cars or of the Cars or any of them, Lessee's obligations to Lessor hereunder shall remain in all respects in full force and effect.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except to the extent permitted by the provisions of the preceding or succeeding paragraphs of this Section.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Cars and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or upon lines of railroad

over which the Lessee has trackage or other operating rights or over which railroad cars of the Lessee are regularly operated pursuant to contract, and also to permit the use of the Cars upon connecting and other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease; and Lessee may receive and retain compensation for such use from other railroads so using any of the Cars.

14. OPINION OF COUNSEL. Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in form and substance satisfactory to the Lessor, to the effect that

A. the Lessee is a corporation duly incorporated and validly existing, in good standing under the laws of the Commonwealth of Pennsylvania, with full corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee enforceable in accordance with its terms;

C. if this Lease is filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 148 of the Railway

Act no other filing, recording or depositing is necessary to protect the Lessor's title to the Cars in the United States of America and in Canada;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease; and

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Cars or the Lessee's leasehold interest under this Lease in the Cars pursuant to, any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound.

15. CERTIFIED RESOLUTIONS, INCUMBENCY CERTIFICATE. Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor resolutions of the Board of Directors of Lessee, certified by the Secretary or an Assistant Secretary of the Lessee, duly authorizing the sale of the Cars to the Lessor and the lease of the Cars hereunder and the execution, delivery and performance of this Lease, together with an incumbency certificate as to the persons authorized to execute and deliver this Lease and the related documents hereunder on behalf of the Lessee.

16. RECORDING; EXPENSES. The Lessee will, without expense to the Lessor, cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section

20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act. The Lessee will, at its expense, from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will re-file, re-register, re-record or re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection, to the satisfaction of the Lessor, of its title to the Cars, or for the purpose of carrying out the intention of this Lease.

The Lessor shall have the right, at anytime during the term of this Lease, to appoint a bank or trust company selected by it to act as agent or trustee for it hereunder.

17. LESSOR'S RIGHT TO PERFORM AND PAYMENTS BY LESSEE.

If Lessee fails to make at the agreed time any payments required by this Lease or fails to discharge any of its other obligations contained herein, Lessor may, but shall not be required to, make such payments or discharge such obligations. The amount of any such payment and Lessor's expenses, including (without limitation) reasonable legal fees and expenses, in connection therewith and with such performance, shall be payable by Lessee promptly upon notice from Lessor that such amount is due.

Any provision herein that Lessee shall take any action shall require Lessee to do so at its sole cost and expense. Lessee shall pay Lessor interest at the rate of 12 percent per annum (to the extent lawful) from the date it is required to

make any payment of rent or other amount hereunder to Lessor to the date such payment is made.

18. PURCHASE OPTION AND APPRAISAL.

(a) Purchase Options. If no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing hereunder, and this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option, upon written notice to Lessor at least 120 days prior to the expiration of the term of this Lease, to purchase all but not less than all of the Cars leased hereunder at the end of the term of this Lease at a price equal to the fair market value (determined as provided in paragraph (b) of this Section 18) of the Cars at the end of such term. On the date of such purchase, Lessee shall pay Lessor the purchase price of all such Cars in cash and Lessor shall transfer title to all such Cars to Lessee AS-IS WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, together with such documents evidencing transfer of title as Lessee shall reasonably request.

(b) Appraisal. The "fair market value" of such Cars shall be determined by an appraiser selected by mutual agreement between the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, the fair market value shall be determined by American Appraisal Company. The fair market value as finally determined shall bear interest for the period, if any, from the date of expiration of this Lease to the date of payment at the rate of 12% per annum. Unless the Lessee has given the

Lessor 120 days' notice as required in connection with exercise of the foregoing option, the Cars shall be returned to the Lessor.

19. FEDERAL INCOME TAXES. The Lessor, as the owner of each Car, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereafter called the "Code"), to an owner of property, including without limitation (i) an allowance for an investment tax credit equal to seven percent (7%) of Lessor's qualified investment in each Car and (ii) an allowance for depreciation based on the maximum depreciation deduction possible using any accelerated method and Asset Depreciation Range to the extent permitted by the Code. Accordingly, the Lessee represents and warrants that (i) at the time the Lessor becomes the owner of the Cars, the Cars constitute "new Section 38 property" within the meaning of Section 48(b) of the Code and at such time, the Cars have not been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor and (ii) at all times during the term of this Agreement, each Car will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If there shall be a disallowance, elimination, recomputation, reduction or disqualification (hereinafter call "Loss"), in whole or in part, of such investment tax credit, Lessee shall, within ten days after receipt of written request from Lessor pay to Lessor as additional rent an amount which, after deduction of federal and state income taxes, interest and penalties required to be paid by Lessor with respect to the receipt of such additional rent, is equal to such Loss of such investment tax credit.

If there shall be a Loss, in whole or in part, of the claimed depreciation deduction for any Unit based on the purchase price (cost) of such Unit to Lessor, Lessee shall, after written request of Lessor pay to Lessor additional rent to compensate Lessor for the consequent lost cumulative deferral of income tax liability (hereinafter called "Detriment"), which may exist thereafter from time to time, as determined by Lessor. "Detriment" shall equal the amount of cumulative additional income tax required to be paid by Lessor as a result of the Loss, from the time of the Loss to the end of the term of the Lease. Such additional rent shall be an amount which, after deduction of federal and state income taxes, interest and penalties required to be paid by Lessor with respect to the receipt of such additional rent will, in the reasonable opinion of Lessor, cause Lessor's net yield in respect of such Unit to equal the net yield that Lessor would have received if Lessor had not suffered a Loss with respect to the claimed depreciation deduction. Such additional rent shall be paid in equal amounts commencing with the first periodic rental payment due after Lessor notified Lessee of the required additional rent and terminating with the rent payment due one year after such first periodic rent payment.

Notwithstanding the provisions of the two immediately preceding paragraphs of this Section 19, Lessee shall not be required to make any payment on account of any Loss due solely to (1) the failure of the Lessor to have any federal income tax liability against which to apply such investment tax credit or the inability

of Lessor or the affiliated group of which it is a member to utilize the investment tax credit as a result of the limitation imposed by Section 46(a)(2) of the Code, (2) the failure to properly claim such investment tax credit and depreciation in the tax returns filed by Lessor or the affiliated group of which it is a member or (3) the sale or disposition of any Unit or the Lease by Lessor prior to any default by Lessee.

In the event the Internal Revenue Service proposes an adjustment to investment tax credits or depreciation deductions claimed on a United States corporation income tax return of the Lessor or the affiliated group of which it is a member which adjustment, if successful, could result in a Loss for which Lessee would be required to indemnify the Lessor pursuant to this Section 19, the Lessor hereby agrees to exercise in good faith its best efforts, determined by Lessor, its sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies and not requiring administrative or judicial proceedings beyond the level of an Internal Revenue Service examining agent, to avoid requiring Lessee to pay such indemnity, provided that Lessee, promptly after receipt of notice from Lessor of such proposed adjustment, shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustment and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustment including without limitation (A) reasonable attorneys', accountants', engineers' and like professional fees and disbursements, and (B) in the event that the Lessor shall elect to contest the adjustment by paying

the tax claimed and then seeking a refund thereof, an amount equal to 12% per annum interest on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rent for such period is payable. Upon receipt by the Lessor of a refund of any tax paid by it in respect of which Lessee has paid an amount equal to interest at the rate of 12% while such tax payment was contested by the Lessor, any interest on such refund paid to the Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by the Lessor.

The Lessee's agreement to pay any sums which may become payable pursuant to this Section 19 shall survive the expiration or other termination of this Agreement.

20. NOTICES. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mail, first-class certified mail, postage prepaid, addressed as follows:

If to the Lessor:

Mellon National Leasing Corporation
3714 Mellon Bank Building
Pittsburgh, Pennsylvania 15219

If to the Lessee:

Pittsburg & Shawmut Railroad Company
132 North McKean Street
Kittanning, Pennsylvania 16201

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

21. LAW GOVERNING. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 148 of the Railway Act.

22. MISCELLANEOUS. If this Lease or any provision hereof shall be deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality, and enforceability of this Lease in other respects and other jurisdictions shall not in any way be impaired or affected thereby.

The section headings in this Lease are for convenience or reference only and shall not be considered to be a part of this Lease.

This Lease, and any lease supplemental hereto, may be executed in several counterparts each of which, when so executed, shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused these presents

to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

MELLON NATIONAL LEASING CORPORATION

By /s/ Harry R. Leggett

(Corporate Seal)

Attest: /s/ John F. Hyle

PITTSBURG & SHAWMUT RAILROAD COMPANY

By /s/ W. R. Weaver

(Corporate Seal)

Attest: /s/ E. P. Skau

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

The undersigned has compared the foregoing copy with the original document and avers that it is a true and correct copy in all respects.

-29-

Nancy R. Lewis
Notary Public

NANCY R. LEWIS, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires Jan. 29, 1976

(Notarial Seal)

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

SS:

On this 14th day of September, 1973 before me appeared Harry R. Leggett to me personally known, who, being by me duly sworn, says that he is President of Mellon National Leasing Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority contained in its By-Laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Liane K. Freiss
Notary Public

(Notarial Seal)

DIANE K. FREISS
Notary Public, Pittsburgh, Allegheny Co.
My Commission Expires July 1, 1974

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

SS:

On this 14th day of September, 1973 before me personally appeared R. H. Weaver, to me personally known, who, being by me duly sworn, says that he is President of Pittsburgh & Shawmut Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Liane K. Freiss
Notary Public

(Notarial Seal)

DIANE K. FREISS
Notary Public, Pittsburgh, Allegheny Co.
My Commission Expires July 1, 1974

SCHEDULE A

Quantity: 200

Type: 100-Ton Open Coal Hopper Cars

Lessee's Road Numbers 300-499
(inclusive):

SCHEDULE B

"Casualty Value" of any Car as of any particular date shall mean the following:

CASUALTY VALUE TABLE

During Year Beginning September 15, 1973	\$15,445
1974	15,396
1975	15,199
1976	14,856
1977	13,674
1978	13,037
1979	11,561
1980	10,631
1981	8,862
1982	7,639
1983	6,269
1984	4,752
And Thereafter	3,089

CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE AGREEMENT

TO: MELLON NATIONAL LEASING CORPORATION

I, duly appointed inspector and authorized representative of Pittsburgh & Shawmut Railroad Company ("Lessee") for the purpose of the Agreement to Acquire and Lease, dated as of June 20, 1973, between Mellon National Leasing Corporation ("Lessor") and Lessee and the Equipment Lease Agreement, dated as of September 15, 1973, between Lessor and Lessee, do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of Lessee and under such Agreements, of the following railroad cars ("Cars"):

TYPE OF CARS:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF CARS:

NUMBERED:

I do further certify that each of the foregoing Cars is in good order and condition, and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation requirements and specifications and that each Car has been numbered and marked in accordance with Section 5 of the Equipment Lease Agreement referred to above.

The execution of this certificate will in no way relieve or decrease the responsibility of the Manufacturer of the Equipment for any warranties it has made with respect to the Equipment.

DATED: , 1973

Inspector and Authorized
Representative of
PITTSBURG & SHAWMUT RAILROAD COMPANY